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ABSTRACT

This description of the copyright protection available for automated databases provides a definition of an automated database; discusses the extent of copyright protection, i.e., the compilation of facts; explains copyright registration and what constitutes publication of a database; and describes the procedures for registering both published and unpublished databases with the U.S. Copyright Office, including the form to be completed, deposit requirements, information on special relief and trade secrets, and the form and location of the copyright notice. Some points to remember and sources of additional information are also provided. (EW)

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Circular 65

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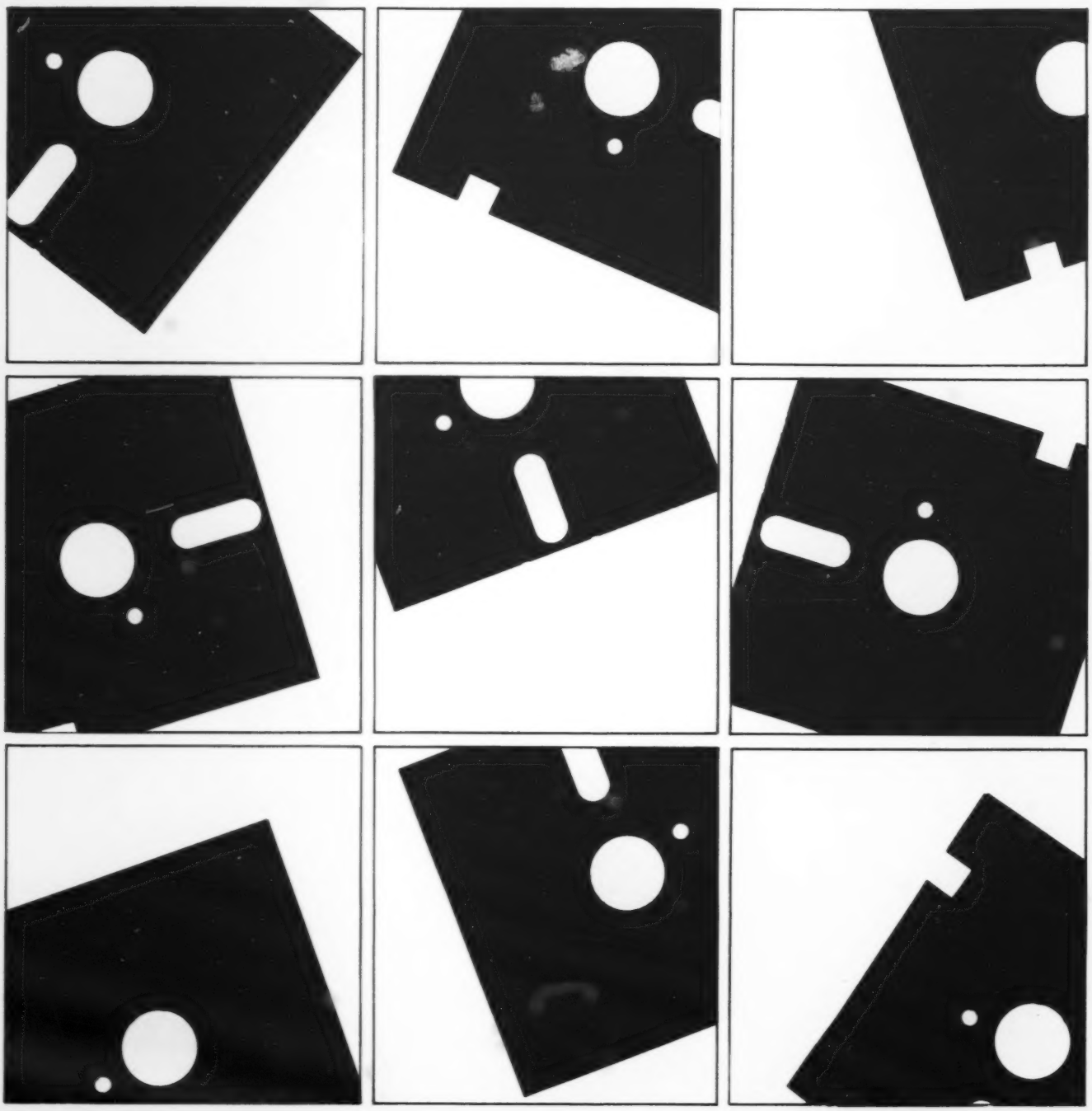
Copyright Registration for Automated Databases



IR052335

Copyright Registration For Automated Databases

DEFINITION

An automated database is a body of facts, data, or other information assembled into an organized format suitable for use in a computer and comprising one or more files.

The copyright law does not specifically enumerate databases as copyrightable subject matter but the legislative history indicates that Congress considered computer databases and compilations of data as "literary works" subject to copyright protection. Databases may be considered copyrightable as a form of compilation, which is defined in the law as a work "formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship."

EXTENT OF COPYRIGHT PROTECTION

Copyright protection extends to the compilation of facts. Thus, the compilation aspect of a database is generally copyrightable if it represents original authorship. In some instances some or all of the contents of a database, new or revised, may also be copyrightable, as in the case of a full-text bibliographic database.

Copyright protection is not available for:

- ideas, methods, systems, concepts, and layouts;
- individual words and short phrases, individual unadorned facts; and,
- the selection and ordering of data in a database where the collection and arrangement of the material is a mechanical task only, and represents no original authorship; e.g., merely transferring data from hard copy to computer storage.

COPYRIGHT REGISTRATION

Copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. In general, registration is not a condition of copyright protection. However, the copyright law encourages registration by providing certain incentives to register. For example:

- Registration establishes a public record of the copyright claim;
- Registration is ordinarily necessary before an infringement suit may be filed in court;
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate; and
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees are available to the copyright owner in court actions.

WHAT CONSTITUTES PUBLICATION OF A DATABASE?

The copyright law defines publication as "the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication." It is unclear whether on-line availability with or without printers for the user constitutes publication of the work under the copyright law. The Copyright Office does not determine whether a particular database is published or not. Instead, that decision is made by the copyright owner.

REGISTRATION FOR PUBLISHED AND UNPUBLISHED DATABASES

Since automated databases are typically revised or updated more frequently than other types of works, it is important to be aware of the scope of each registration. Registration for a *published* database extends only to the material first published as a unit, i.e., that which is published on the date given in the application as the "date of publication." Subsequent revisions or updates published together on a given date are considered another single published unit. Several separately published units (for example, updates published on three different dates) cannot be grouped together and registered using a single application and fee. Instead, each unit of publication is subject to separate registration, requiring a separate application, fee, and deposit.

Registration for an *unpublished* database extends to the database as it exists at the time it is submitted for registration. Subsequent additions or revisions to an unpublished

database may be grouped together and registered either as a single claim or separately using separate applications and fees.

WHAT TO SEND

- A completed Form TX
- A $10.00 nonrefundable filing fee payable to the Register of Copyrights
- Appropriate deposit (See below.)

COMPLETING FORM TX

Complete all applicable spaces on the form, and please note the following information when completing spaces 2, 3, and 6.

Basis of Claim

Where all of the material in a database has been previously published, previously registered, or is in the public domain, the claim must be limited to "compilation" assuming the requisites of original selection, coordination, or arrangement are present. Where all, or a substantial portion, of the material in the database represents copyrightable expression and it is being published or registered for the first time, the claim could also extend to "text," "revised text," "additional text," or the like.

Space 2. In the "nature of authorship" space identify the copyrightable authorship in the database for which registration is sought.

EXAMPLE: Author of "compilation." (Do not include any reference to design, physical form, features, hardware, or other uncopyrightable elements.)

Space 6. Complete this space if the database contains a substantial amount of previously published, previously registered, or public domain material. Leave space 6 blank if the material contained in the database is entirely new and never before registered or published.

EXAMPLES: For a database containing only previously published information, space 6 could be completed as follows:

Space 6a "previously published data"
Space 6b "compilation"

For a database that is revised or periodically updated with new copyrightable material, space 6 could be completed as follows:

Space 6a "previously registered database"
Space 6b "revised and updated text; revised compilation"

Space 3. The **date of creation** space must be completed. Indicate the year in which the author completed the particular version for which registration is now sought, even if other versions exist or if further changes or additions are planned. The **publication** space should be completed only if the database has been published.

DEPOSIT REQUIREMENTS

General Requirements

For databases fixed and/or published only in machine-readable copies, the deposit requirements are the same for published and unpublished databases except that, if the database is published, the deposit must also include a representation of or the page containing the copyright notice, if any.

The deposit for published and unpublished databases should consist of one copy of identifying portions of the work reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform.

Specific Requirements

Single-file Database (data records pertaining to a single common subject matter):

—identifying portions (first and last 25 pages).

**Multiple-file Database* (separate and distinct groups of data records):

—representative portions of each file (50 data records or the entire file, whichever is less).

Revised Database (either single or multiple file):

—representative portions of the added or modified material (50 pages or the entire revised portions, whichever is less).

***NOTE: For multiple-file databases (new or revised), the deposit must also include a descriptive statement containing: title of the database; name and address of copyright claimant; name and content of each separate file within the database, including subject matter, origin of data and number of separate records within each file. For published multiple-file databases, also include a description of the exact contents of any machine-readable copyright notice used in or with the database (plus manner and frequency of display); and sample of any visually perceptible copyright notice affixed to the copies or container.**

Special Deposit for Encoded Databases

Database deposits should be humanly intelligible, preferably printouts written in a natural language. If the deposit is encoded, it should include a key or explanation of the code so that a copyright examiner can determine the presence of copyrightable material. When no key or explanation is provided with an unintelligible database, registration will be made under the rule of doubt upon receipt of the copyright owner's written confirmation that the work as deposited represents copyrightable authorship.

Rule-of-doubt registrations occur when there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court with respect to whether the material deposited for registration constitutes copyrightable subject matter or whether the other legal and formal requirements of the statute have been met. The doubt concerning encoded databases results from the examiner's inability to determine the presence of copyrightable material.

SPECIAL RELIEF AND TRADE SECRETS

When a database contains trade secrets or other confidential material that the applicant is unwilling to disclose through deposit for registration, the Copyright Office is willing to consider special relief requests, permitting the deposit of less than or other than the required deposit. Special relief requests are granted at the discretion of the Chief, Examining Division, upon receipt of the applicant's written request, setting forth specific reasons why the request should be granted and indicating what deposit the applicant is able to make.

FORM OF COPYRIGHT NOTICE

Form of Notice for Visually Perceptible Copies

The notice for visually perceptible copies should contain all of the following three elements:

1. *The symbol* © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr."

2. *The year of first publication* of the work. In the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient.

3. *The name of the owner of copyright* in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

EXAMPLE: © 1987 XYZ Corp.

LOCATION OF COPYRIGHT NOTICE
Section 201.20(g), 37 C.F.R.

(g) WORKS REPRODUCED IN MACHINE-READABLE COPIES

For works reproduced in machine-readable copies (such as magnetic tapes or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device,[1] each of the follow-

[1]Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

ing constitutes an example of acceptable methods of affixation and position of notice:

(1) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(2) A notice that is displayed at the user's terminal at sign on;

(3) A notice that is continuously on terminal display; or

(4) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

POINTS TO REMEMBER

A copyright registration is effective on the date of receipt in the Copyright Office of all the required elements in acceptable form, regardless of the length of time it takes to process the application and mail the certificate of registration. The length of time required by the Copyright Office to process an application varies from time to time, depending on the amount of material received and the personnel available to handle it. It must also be kept in mind that it may take a number of days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient after being mailed by the Copyright Office.

You will not receive an acknowledgement that your application for copyright registration has been received (the Office receives more than 500,000 applications annually), but you may expect:

- A letter or telephone call from a copyright examiner if further information is needed; and
- A certificate of registration to indicate the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected.

You may not receive either of these until 120 days have passed.

If you want to know when the Copyright Office received your material, you should send it by registered or certified mail and request a return receipt.

FOR MORE INFORMATION

If you have general information questions and wish to talk to an information specialist, call 202-479-0700. To order forms, write to the Publications Section, LM-455, Copyright Office, Library of Congress, Washington, D.C. 20559 or call 202-287-9100, the Forms and Publications Hotline.

Copyright Office • Library of Congress • Washington, D.C. 20559

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